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FITBIT, INC.

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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13
14 FITBUG LIMITED, a United Kingdom Limited
Liability Company,

Case No.: 13-cv-01418-SC

15 Plaintiff,

**STIPULATION AND [PROPOSED]
ORDER TO BIFURCATE FITBIT'S
MOTION FOR ATTORNEYS' FEES**

16 v.

17 FITBIT, INC., a Delaware Corporation,

18 Defendant.

19
20 FITBIT, INC., a Delaware Corporation,

21 Counter-Claimant,

22 v.

23 FITBUG LIMITED, a United Kingdom Limited
Liability Company,

24 Counter-Defendant.

1 On January 26, 2015, the Court issued its Order on Motions for Summary Judgment (Dkt.
 2 No. 96), which disposed of each party's claims against the other. On the same day the Court
 3 entered Judgment (Dkt. No. 97).

4 Section 1117(a) of the Lanham Act provides that the Court may award fees and costs to
 5 the prevailing party in an exceptional case under that Act.¹ Defendant Fitbit intends to file a
 6 motion seeking an award of fees and costs. Plaintiff Fitbug Ltd. disputes that it is liable for
 7 attorneys' fees and costs under the Lanham Act.

8 Under Federal Rule of Civil Procedure 54(d)(2)(C), the court may "decide issues of
 9 liability for fees before receiving submissions on the value of services." In the interest of
 10 efficiency for the parties and judicial economy, the parties stipulate to, and ask the Court to
 11 approve, an order bifurcating Fitbit's motion for attorneys' fees so that the Court will separately
 12 consider (1) whether to award attorneys' fees and costs to Fitbit, and, if so, (2) the amount and
 13 reasonableness of the fees and other costs Fitbit seeks. Fitbug agrees to this stipulation on the
 14 condition that, in the motion concerning liability, Fitbit shall identify the approximate amount of
 15 fees and costs incurred through the date of this stipulation that it seeks (and will not seek more
 16 than this amount for its fees and costs incurred to the date of this stipulation in the event the Court
 17 rules Fitbit is entitled to recover reasonable attorneys' fees and costs). Fitbit agrees to this
 18 condition.

19 The parties further stipulate to, and ask the Court to approve, a briefing schedule on
 20 Fitbit's anticipated motion for attorneys' fees whereby Plaintiff Fitbug's opposition to Fitbit's
 21 motion shall be filed by April 6, 2015 and Fitbit's reply papers in further support of its motion
 22 shall be filed by April 20, 2015.

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24 ///

25 ///

26 ///

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28 ¹ Fitbit's motion for award of attorneys' fees and costs is due by March 9, 2015 (Dkt. No. 102).

1 **IT IS SO STIPULATED:**

2 Dated: March 2, 2015.

TARTER KRINSKY & DROGIN LLP

3 By: /s/ Mark J. Rosenberg

4 Mark J. Rosenberg

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20 Attorneys for Defendant and Counter-Plaintiff
21 FITBIT, INC.

1 [PROPOSED] ORDER
2

3 **IT IS HEREBY ORDERED** that:

4 (a) Defendant Fitbit, Inc. shall file its motion for an award of attorneys' fees and costs by
5 March 9, 2015. The motion shall address whether the Court should award attorneys' fees
6 and costs to Fitbit. This motion shall identify the approximate total amount of fees and
7 costs sought for such fees and costs incurred through March 2, 2015, but it need not
8 address the reasonableness of fees or costs or provide supporting evidence of those fees
9 and costs.

10 (b) Plaintiff Fitbug's opposition to Fitbit's motion shall be filed by April 6, 2015 and Fitbit's
11 reply papers in further support of its motion shall be filed by April 20, 2015.

12 (c) If the Court grants Fitbit's motion, Fitbit shall have 14 days from the date of the order to
13 submit further briefing and declarations supporting the amount and reasonableness of the
14 fees and costs it seeks.

15 Dated: _____
16

17 _____
18 The Honorable Samuel Conti
19 United States District Judge
20

1 **ATTESTATION REGARDING CONCURRENCE**

2 I, Jedediah Wakefield, am the ECF User whose ID and password are being used to file
3 this STIPULATION AND [PROPOSED] ORDER TO BIFURCATE FITBIT'S MOTION FOR
4 ATTORNEYS' FEES. In compliance with Local Rule 5-1, I hereby attest that other counsel
5 whose e-signatures appear above have concurred with this filing.

6

7 Dated: March 2, 2015

8 _____
9 /s/*Jedediah Wakefield*
10 Jedediah Wakefield

11 FENWICK & WEST LLP
12 ATTORNEYS AT LAW
13 MOUNTAIN VIEW